

Customer No. 25280

Case 5113B

**REMARKS**

Claims 88, 90 – 128, 130 – 139, and 144 (2<sup>nd</sup> Occurrence) – 148 were pending in this application. Claims 91, 92, 94, 99, and 118 have been amended in the manner set forth above. Claims 133, 137, 139, second occurrence of 144, and 145 – 148 have been canceled without prejudice. New claim 149 has been added. It is respectfully submitted that all remaining claims now stand in condition for allowance. Accordingly, reconsideration and withdrawal of all outstanding rejections is respectfully requested at this time.

**ART REJECTIONS:**

Claims 88, 90 – 128, 130 – 132, 134 – 136, and 138 were rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent 4,522,857 to Higgins in view of U.S. Patent 5,610,207 to De Simone.

As regards all remaining claims, as best understood, the fundamental rationale for all rejections is that it would have been obvious to one of skill in the art to substitute a rebond foam product as taught by De Simone '207 for the foam layer in Higgins '857.

As will be noted in an Examiner's Interview Summary, the undersigned had a personal interview with the Examiner relative to this application (as well as a number of other related applications) on September 15, 2004. During the interview, the undersigned showed the Examiner carpet samples with rebond foam cushions, and discussed the Higgins '857, Higgins '968, and De Simone '207 references, the history and development of carpet tiles, why it would not have been obvious to one of skill in the carpet tile art to use rebond foam in a carpet tile, and several features and embodiments including the flame laminated and hot melt laminated embodiments, foam density, cut, slit or peeled foam, foam strip size, and a supplemental declaration.

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As described on pages 45 and 46 of the present application, rebond foam pads for broadloom carpet were known. Such rebond foam pad typically had large chip sizes, low density, non-uniform density, was frangible, fragile, and relatively thick. Also, such rebond foam pads were not used in preformed carpet tiles prior to the invention described in commonly owned U.S. Patent Application 09/721,871 and as described in the present application.

In addressing this same rejection in an earlier application 09/721,871 being examined by the same Examiner, Applicants submitted a first declaration of Richard L. Kilpatrick who holds the position of Director of Development for the company which developed and manufactured the product set forth in the primary reference. This entity Milliken & Company also owns the present application. Applicants also submit herewith a second or Supplemental Declaration of Richard L. Kilpatrick. A copy of this Supplemental Declaration is appended for incorporation into the present record.

As described in the declarations, it would not have been obvious for one of ordinary skill in the carpet tile art to use rebond foam in a cushion back carpet tile.

Milliken & Company has two rebond foam cushion back carpet tile products on the market today, the Legato™ carpet system and the Tesserae™ carpet system. The Legato carpet tiles have a special interlocking wave shape while the Tesserae carpet tiles are square. At present, at least Milliken's Legato™ carpet system (sold in Home Depot stores) is enjoying commercial success.

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It was surprising and unexpected that a polyurethane rebond foam would work in a cushion back carpet tile, much less a carpet tile rated for commercial use.

As set forth, for example, in pages 96 – 103 of the present application, cushion back carpet tile samples having the same construction as Milliken Comfort Plus® cushion back carpet tiles with the exception of rebond foam (flame laminated to fiber- glass and felt) rather than filled polyurethane foam (in-situ laminated to the fiberglass and felt) (same face construction, same layer construction) were tested and surprisingly and unexpectedly found to have performance characteristics at least on par with filled polyurethane cushion back carpet tiles and to be rated for commercial use. Such structures are shown, for example, in Figures 15A, 15B, and 19A, 19B of the drawings of the present application and in Figures 3A and 3B of the Higgins '276, '500, and '881 patents.

As one of skill in the art, Mr. Kilpatrick has concluded that contrary to the position taken by the Office Action, one of skill in the art would not have been motivated to substitute the foam layer in the tile disclosed in Higgins '857 with the rebond foam materials from De Simone '207.

Accordingly, reconsideration and withdrawal of all outstanding rejections is requested at this time.

CONCLUSION:

On the grounds as set forth above, Applicants respectfully request that all remaining claims be passed to issue. While an attempt has been made to address all outstanding issues, to

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any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

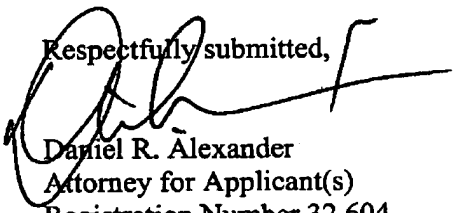
EXTENSION OF TIME / FEE AUTHORIZATION:

While this amendment is believed to be timely, to any extent required a petition for an extension of time is hereby made.

Please charge any fees or credit any overpayment in connection with this Amendment (including any extension of time fee) to Deposit Account 04-0500.

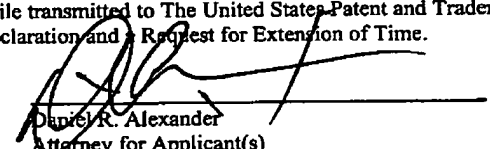
September 23, 2004

Respectfully submitted,

  
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to The United States Patent and Trademark Office at 703-872-9306 on September 23, 2004 along with attached declaration and a Request for Extension of Time.

  
Daniel R. Alexander  
Attorney for Applicant(s)

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